

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SAN JUAN CANCER CENTER, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 51451</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 7, 2010, James R. Meurer, Louesa Maricle, and Lyle D. Hansen presiding. Petitioner was represented by Adam W. Chase, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent’s denial of property tax exemption for tax years 2006, 2007, and 2008 for the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**600 South 5th Street, Montrose, Colorado
Montrose County Schedule No. R0650577
Property Tax Administrator File No. 43-01163-01**

The subject property is a two story medical facility consisting of approximately 14,000 square feet and built in 2005/2006. The property is referred to as the San Juan Cancer Center and is owned by Petitioner, San Juan Cancer Center, LLC. Petitioner’s Operating Agreement indicates that the LLC consists of three members: the Montrose Memorial Hospital, St. Mary’s Hospital and Medical Center, and San Juan Radiation Oncology, Inc. San Juan Radiation Oncology, Inc. is a private, for-profit corporation. The first floor of the subject property is used by San Juan Radiation Oncology, Inc. The second floor is used by Montrose Memorial Hospital.

Petitioner contends that the subject property is entitled to a real property tax exemption for tax years 2006, 2007, and 2008 because of the charitable purposes of the cancer center. Petitioner

further contends that the subject property qualifies as a non-residential health care facility pursuant to Section 39-3-108, C.R.S. because it meets the requirements for exemption by saving lives and lessening the burden of government. Petitioner contends that physicians of San Juan Radiation Oncology, Inc. are present to supervise the treatment of the patients and are necessary for the performance of the procedures that are part of the cancer treatment.

Respondent contends that the subject property is not entitled to a real property tax exemption for tax years 2006, 2007, and 2008 because San Juan Radiation Oncology, Inc. is a private group of physicians that has a one-third ownership in the LLC that owns the subject property. Respondent contends that the subject property is not owned and used solely and exclusively for strictly charitable purposes. It is owned and used, at least in part, for private gain or corporate profit. Article 6 of Petitioner's Operating Agreement provides for the allocation of net profits and net losses among the members of the LLC. Section 6.1 provides that profits and losses are divided among the members of the LLC "in proportion to their respective Percentage Interests." According to Exhibit A of the Operating Agreement, each member owns one-third of the LLC. As a result, Respondent contends that all members share equally in the profits and losses.

Petitioner did not present sufficient probative evidence and testimony to prove that the subject property meets the qualifications for real property tax exemption for tax years 2006, 2007, and 2008.

Section 39-3-108 (1), C.R.S. provides:

Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if . . .

(b) Such property is licensed by the state of Colorado as a health care facility.

In order to qualify for a real property tax exemption, both ownership and use of the subject property must be solely and exclusively for strictly charitable purposes and not for private gain or corporate profit. Section 39-1-102(8.5), C.R.S. defines "Not for private gain or corporate profit" to mean:

[T]he ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose.

the Board finds that San Juan Radiation Oncology, Inc., a for-profit corporation, is a one-third member of the LLC which owns the subject property and shares equally with the other two members in the profits and losses.

ORDER:

The petition is denied.

APPEAL:

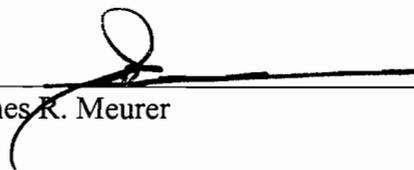
If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

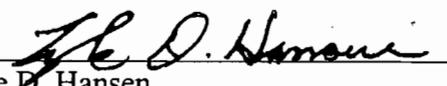
Section 39-2-117(6), C.R.S.

DATED and MAILED this 3rd day of June 2010.

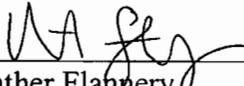
BOARD OF ASSESSMENT APPEALS


James R. Meurer


Louesa Maricle


Lyle E. Hansen

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Heather Flannery

